

## § 2.105

## 40 CFR Ch. I (7–1–14 Edition)

(2) A brief statement of the reason(s) for the denial, including an identification of records being withheld (individual, or if a large number of similar records are being denied, by described category), and any FOIA exemption applied by the office in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under, and a description of the requirements of, paragraph (j) of this section.

(i) *Denial of fee waiver.* The letter denying a request for a fee waiver or expedited treatment will be signed by the head of the Headquarters FOI Staff or Regional FOI Officers.

(j) *Appeals of adverse determinations.* If you are dissatisfied with any adverse determination of your request by an office, you may appeal that determination to the Headquarters Freedom of Information Staff, Records, Privacy and FOIA Branch, Office of Information Collection, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW., Washington, DC 20460; e-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). The appeal must be made in writing, and it must be submitted to the Headquarters FOI Staff no later than 30 calendar days from the date of the letter denying the request. The Agency will not consider appeals received after the 30-day limit. The appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest possible handling, the appeal letter and its envelope should be marked “Freedom of Information Act Appeal.” Unless the Administrator directs otherwise, the General Counsel or his/her designee will act on behalf of the Administrator on all appeals under this section, except that:

(1) In the case of an adverse initial determination by the General Counsel or his/her designee, the Administrator or his/her designee will act on the appeal;

(2) The Counsel to the Inspector General will act on any appeal where the Inspector General or his/her designee has made the initial adverse determination; however, if the Counsel to the Inspector General has signed the initial adverse determination, the General Counsel or his/her designee will act on the appeal;

(3) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(4) If a requester seeks judicial review because the Agency has not responded in a timely manner, any further action on an appeal will take place through the lawsuit.

(k) The decision on your appeal will be made in writing, normally within 20 working days of its receipt by the Headquarters Freedom of Information Staff. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the decision, including any FOIA exemption(s) applied, and inform you of the FOIA provisions for judicial review of the decision. If the adverse determination is reversed or modified on appeal, you will be notified in a written decision. This written decision will either have the requested information that has been determined on appeal to be releasable attached to it, or your request will be returned to the appropriate office so that it may be reprocessed in accordance with the appeal decision.

(l) If you wish to seek judicial review of any adverse determination, you must first appeal that adverse determination under this section, except when EPA has not responded to your request within the statutory 20 working day time limit. In such cases, you may seek judicial review without making an administrative appeal.

### § 2.105 Exemption categories.

(a) The FOIA, 5 U.S.C. 552(b), establishes the following nine categories of information which are exempt from the

## Environmental Protection Agency

## §2.107

mandatory disclosure requirements of 5 U.S.C. 552(a):

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding information or refers to particular types of information to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the affected agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency

conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) [Reserved]

### §2.106 Preservation of records.

Each FOI Officer shall preserve all correspondence pertaining to the FOIA requests that it receives until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Copies of all responsive records should be maintained by the appropriate program office. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### §2.107 Fees.

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (1) of this section. Requesters will pay fees by check or money order made payable to the U.S. Environmental Protection Agency.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial,